IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

OP.No. 20411 of 1998(E)

PETITIONER:

1.. C.M.BABY, CHERUVATHOOR HOUSE, SREENIVAS MALLAN ROAD, ERNAKULAM COCHI-35.

2. MRS. MARGERITTA BABY, W/O. BABY, DO. DO.

3. SOLAMAN CHERUVATHOOR, DO.

4. MORRIS CHERUVATHOOR, DO.

5. SANTHOSH CERUVATHOOR, DO.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY TO GOVT., SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT COLLECTOR, CIVIL STATION, ERNAKULAM.

3. REVENUE DIVISIONAL OFFICER, FORT COCHIN.

4. THE TAHSILDAR, KANAYANNUR TALUK, ERNAKULAM.

BY GOVERNMENT PLEADER SHRI C.K. GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.35965/98

DISMISSED.

13/11/2007 SD/- T.R. RAMACHANDRAN NAIR, JUDGE.

APPENDIX

EXT.P1-TRUE COPY OF AGREEMENT DATED 26.3.92

EXT.[1(A)- TRUE ENGLISH TRANSLATION OF EXT.-P1

EXT.P2-TRUE COPY OF ORDER OF ASSESSMENT TO THE PROPERTY TAX ISSUED BY THE CORPORATION OF KOCHI TO THE FIRST PETITIONER

EXT.P2(A)- DO. DO. TO THE SECOND PETITIONER

EXT.P2(B)- DO. TO THE THIRD PETITIONER

EXT.P2(C)- DO. DO THE 4TH PETITOINER

EXT.P2(D)- DO. TO THE 5TH PETITIONER

EXT.P3 TO P3(D)- TRUE ENGLISH TRANSLATION OF EXTS.P2 TO P2(D)

EXT.P4-TRUE COPY OF THE PROPERTY TAX RECEIPTS ISSUED BY KOCHI CORPORATION IN RESPECT OF THE BUILDING OF FIRST PETITIONER DT.19.9.98

EXT.P4(A) TO P4(D) DO. DO. ISSUED TO PETITIONERS 2 TO 5.

EXT.P5-TRUE COPY OF NOTICE DATED 24.7.95 TO THE PETITIONERS

EXT.P6-TRUE COPY OF PETITION DATED 30.8.95

EXT.P6(A)- TRUE COPY OF ENGLISH TRANSLATION OF EXT.P6

EXT.P7-TRUE COPY OF THE ASSESSMENT ORDER DATED 27.10.97

EXT.P8-TRUE COPY OF THE STATUTORY APPEAL FILED BY THE PETITIONERS BEFORE R3 DATED 8.12.97

EXT.P9-TRUE COPY OF ORDER OF R3 DATED 5.5.98

EXT.P10-TRUE COPY OF REVISION PETITION DATED 10.6.98 SUBMITTED BEFORE R2

EXT.P11-TRUE COPY OF ORDER DATED 29.9.98 BY R2

// TRUE COPY //

P.S. TO JUDGE

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 20411 of 1998-E.

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Dated this the 13th day of November, 2007.

J U D G M E N T

Petitioners are aggrieved by the order of assessment Ext.P7 under the Building Tax Act which are confirmed by the appellate and revisional authorities by Exts.P9 & P11 orders.

2. The petitioners are the owners of building Nos.42/2129D, 2129E, 2129B, 2129C and 2129A respectively in survey No.288/7 of Ernakulam Village. The building in question is a three storeyed one consisting of three shop rooms on the ground floor owned and possessed by petitioners 3, 4 and 5. The first floor of the building is owned and possessed by the first petitioner and the second floor is owned and possessed by the second petitioner.

3. The case of the petitioners in short is that the assessment of the buildings as one unit is not correct. To sustain the contention they are relying upon Ext.P1 agreement whereby they have agreed that the construction costs for the building will be raised by the petitioners separately and that the assessment from the Corporation has to be effected in the name of the respective owners. It is also stated that going by the agreement all the petitioners are having independent title to their respective portion with the right to alienate the same. The further case pleaded is that the petitioners

have shared the costs of construction equally and the common amenities like car parking etc., has to be used without causing any hindrance to. Therefore, they contend that it can be assessed only separately.

4. Ext.P5 is the notice issued to them to appear before the 4th respondent along with documents. It is asserted that as desired in Ext.P5 the petitioners filed their return in Form No.II and produced various materials including copy of the assessment order of the Kochi Corporation, copy of the approved plan and sanction order issued by the Corporation and also the title deed, copy of agreement dated 26-3-1992 and all details showing the amount invested by each petitioner for the construction of the building.

5. It is not discernible from Ext.P7 that all these materials were concerned by the Tahsildar. In Ext.P8 the contentions of the petitioners are repeated and the appeal has been dismissed as per Ext.P9. Ext.P9 does not show that the evidence produced by the petitioners have been considered in detail. It is thereafter Ext.P10 revision was filed before the 2nd respondent District Collector.

6. The order Ext.P11 shows that the revisional authority was of the view that the building is a commercial one and is neither a flat nor an apartment. This is basically the conclusion arrived at to reject the revision petition. But no reasons are forthcoming in Ext.P11 as to why the pleas raised by the petitioners are not sustainable. There is no discussion on the

materials relied upon by the petitioners also. The learned Government Pleader points out that the case of the petitioners even if it is accepted, the building can be assessed only as a commercial one and the provision of Explanation 2 to Section 2(e) of the Building Tax Act are not attracted. It is a matter for the revisional authority to decide after considering the relevant materials and in accordance with the provisions of the Act. I am not satisfied that Ext.P11 shows a proper adjudication of the revision petition. Therefore, Ext.P11 is quashed. The 2nd respondent is directed to rehear the revision petition Ext.P11 with notice to petitioners within a period of three months from the date of production of a copy of this Judgment. The interim order passed by this Court in CMP.No.35965/1998 in this case will continue to be in force till orders are passed and communicated. I make it clear that I have not decided anything about the merits of the matter.

T.R.RAMACHANDRAN NAIR,
JUDGE.

kvs/-